

**AMENDMENT
TO
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996**

between one or more of

**Illinois Bell Telephone Company,
Indiana Bell Telephone Company Incorporated,
Michigan Bell Telephone Company d/b/a Ameritech Michigan,
Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone
Company,
The Ohio Bell Telephone Company,
SBC Pacific Bell Telephone Company,
The Southern New England Telephone Company, Southwestern Bell
Telephone, L.P. d/b/a Southwestern Bell Telephone Company¹,
Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin**

and

American Fiber Network, Inc.

The Interconnection Agreement by and between Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, The Southern New England Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin ("ILEC") and American Fiber Network, Inc. ("CLEC") ("Agreement") is hereby amended as follows:

- I. Section 5.2 of the General Terms and Conditions of the Agreement is amended to reflect a one-year extension and now reads as follows:

The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on May 16, 2004 (the "**Term**").

- II. Section 1.1.84 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

1.1.84 "Mutual Compensation" as defined in Appendix Reciprocal Compensation.

¹On December 30, 2001, Southwestern Bell Telephone Company (a Missouri corporation) was merged with and into Southwestern Bell Texas, Inc. (a Texas corporation) and, pursuant to Texas law, was converted to Southwestern Bell Telephone, L.P., a Texas limited partnership, doing business as Southwestern Bell Telephone Company ("SWBT").

- III. Section 7 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

7. ASSURANCE OF PAYMENT

- 7.1 Upon request by **SBC-13STATE**, CLEC will provide **SBC-13STATE** with adequate assurance of payment of amounts due (or to become due) to **SBC-13STATE**.
- 7.2 Assurance of payment may be requested by **SBC-12STATE** if:
- 7.2.1 at the Effective Date CLEC had not already established satisfactory credit by having made at least twelve (12) consecutive months of timely payments to **SBC-13STATE** for charges incurred as a CLEC; or
- 7.2.2 in **SBC-12STATE**'s reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or
- 7.2.3 CLEC fails to timely pay a bill rendered to CLEC by **SBC-12STATE** (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.3); or
- 7.2.4 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 7.3 Unless otherwise agreed by the Parties, the assurance of payment will, at **SBC-12STATE**'s option, consist of

- 7.3.1 a cash security deposit in U.S. dollars held by **SBC-12STATE** (“Cash Deposit”) or
- 7.3.2 an unconditional, irrevocable standby bank letter of credit from a financial institution acceptable to **SBC-12STATE** naming the SBC owned ILEC(s) designated by **SBC-12STATE** as the beneficiary(ies) thereof and otherwise in form and substance satisfactory to **SBC-12STATE** (“Letter of Credit”).
- 7.3.3 The Cash Deposit or Letter of Credit must be in an amount equal to three (3) months anticipated charges (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), as reasonably determined by **SBC-12STATE**, for the Interconnection, Resale Services, Network Elements, Collocation or any other functions, facilities, products or services to be furnished by **SBC-12STATE** under this Agreement.
 - 7.3.3.1 Notwithstanding anything else set forth in this Agreement, **SBC-AMERITECH** will not request assurance of payment of charges reasonably anticipated by **SBC-AMERITECH** to be incurred in Ohio in an amount that would exceed 230% of projected average monthly billing to CLEC.
 - 7.3.3.2 Notwithstanding anything else set forth in this Agreement, **SBC-SWBT** will not request assurance of payment of charges reasonably anticipated by **SBC-SWBT** to be incurred in Arkansas in an amount that would exceed one (1) month’s projected bill for CLEC’s initial market entry; provided, however, that after three (3) months of operation, **SBC-SWBT** may request assurance of payment of charges reasonably anticipated by **SBC-SWBT** to be incurred in Arkansas in an amount not to exceed two times projected average monthly billing to CLEC.
 - 7.3.3.3 Notwithstanding anything else set forth in this Agreement, **SBC-SWBT** will not request assurance of payment of charges reasonably

anticipated by **SBC-SWBT** to be incurred in Oklahoma in an amount that would exceed two times projected average monthly billing to CLEC.

- 7.4 To the extent that **SBC-12STATE** elects to require a Cash Deposit, the Parties intend that the provision of such Cash Deposit shall constitute the grant of a security interest in the Cash Deposit pursuant to Article 9 of the Uniform Commercial Code in effect in any relevant jurisdiction.
- 7.5 A Cash Deposit will accrue interest at the rate of six percent (6%) simple interest per annum. Interest will accrue on a Cash Deposit from the day after it is received by **SBC-12STATE** through the day immediately prior to the date the Cash Deposit is credited to CLEC's bill(s) or returned to CLEC. **SBC-12STATE** will not pay interest on a Letter of Credit.
- 7.6 **SBC-12STATE** may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
- 7.6.1 CLEC owes **SBC-12STATE** undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
- 7.6.2 CLEC admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or
- 7.6.3 the expiration or termination of this Agreement.
- 7.7 If **SBC-12STATE** draws on the Letter of Credit or Cash Deposit, upon request by **SBC-12STATE**, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3.
- 7.8 Notwithstanding anything else set forth in this Agreement, if **SBC-12STATE** makes a request for assurance of payment in accordance with the terms of this Section, then **SBC-12STATE** shall have no

obligation thereafter to perform under this Agreement until such time as CLEC has furnished **SBC-12STATE** with the assurance of payment requested; provided, however, that **SBC-12STATE** will permit CLEC a minimum of ten (10) Business Days to respond to a request for assurance of payment before invoking this Section.

7.8.1 If CLEC fails to furnish the requested adequate assurance of payment on or before the date set forth in the request, **SBC-12STATE** may also invoke the provisions set forth in Section 9.5 through Section 9.7.

7.9 The fact that a Cash Deposit or Letter of Credit is requested by **SBC-12STATE** shall in no way relieve CLEC from timely compliance with all payment obligations under this Agreement (including, but not limited to, recurring, non-recurring and usage sensitive charges, termination charges and advance payments), nor does it constitute a waiver or modification of the terms of this Agreement pertaining to disconnection or re-entry for non-payment of any amounts required to be paid hereunder.

7.10 For adequate assurance of payment of amounts due (or to become due) to **SNET**, see the applicable **DPUC** ordered tariff.

IV. Section 8 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

8. BILLING AND PAYMENT OF CHARGES

8.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party.

8.1.1 Remittance in full of all bills rendered by **SBC-AMERITECH**, **SBC-SWBT** and **PACIFIC** is due within thirty (30) calendar days of each bill date (the “**Bill Due Date**”). Payment must be made in accordance with the terms set forth in Section 8.3 of this Agreement.

8.1.2 Remittance in full of all bills rendered by **NEVADA** is due in accordance with the terms set forth in the Commission

C2-A Tariff, with the date on which amounts are due referred to herein as the **“Bill Due Date.”**

8.1.3 Remittance in full of all bills rendered by SNET is due in accordance with the terms set forth in the Connecticut Access Service Tariff approved by the DPUC, with the date on which amounts are due referred to herein as the **“Bill Due Date.”**

8.1.4 Remittance in full of all bills rendered by CLEC is due within thirty (30) calendar days of each bill date (the **“Bill Due Date”**).

8.1.5 If CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to SBC-12STATE as of the Bill Due Date (individually and collectively, **“Past Due”**), then a late payment charge will be assessed as provided in Sections 8.1.5.1 through 8.1.5.3, as applicable.

8.1.5.1 If any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than the SBC-SWBT Customer Records Information System (CRIS) is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid at the lesser of (i) the rate used to compute the Late Payment Charge in the applicable SBC-8STATE intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of any SBC-8STATE billing system other than SBC-SWBT's CRIS will comply with the process set forth in the applicable SBC-8STATE intrastate access services tariff for that state.

8.1.5.2 If any charge incurred under this Agreement that is billed out of SBC-SWBT's CRIS is Past Due, the unpaid amounts will accrue

interest from the day following the Bill Due Date until paid. The interest rate applied to **SBC-SWBT** CRIS-billed Past Due unpaid amounts will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable **SBC-SWBT** intrastate retail tariff governing Late Payment Charges to **SBC-SWBT**'s retail End Users that are business End Users in that state and (ii) the highest rate of interest that may be charged under Applicable Law. The method and timing for application of interest to any charge incurred under this Agreement that is billed out of **SBC-SWBT**'s CRIS will be governed by the **SBC-SWBT** intrastate retail tariff governing Late Payment Charges to **SBC-SWBT**'s retail End Users that are business End Users in that state.

- 8.1.5.3 If any charge incurred under this Agreement that is billed out of any **SBC-AMERITECH** billing system is Past Due, the unpaid amounts will accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the day following the Bill Due Date to and including the date that the payment is actually made and available.
- 8.2 If any charge incurred by **SBC-13STATE** under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid. The interest rate applied will be the lesser of (i) the rate used to compute the Late Payment Charge contained in the applicable **SBC-13STATE** intrastate access services tariff for that state and (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the Bill Due Date to and including the date that the payment is actually made and available.
- 8.3 CLEC shall make all payments to **SBC-12STATE** via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SBC-12STATE**. Remittance information will be communicated

together with the funds transfer via the ACH network. CLEC must use the CCD+ or the CTX transaction set. CLEC and **SBC-12STATE** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each ACH credit transfer must be received by **SBC-12STATE** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **SBC-12STATE** is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.

8.3.1 Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CLEC is responsible for any Late Payment Charges resulting from CLEC's failure to use electronic funds credit transfers through the ACH network.

8.3.2 CLEC must make all payments to **SNET** in "immediately available funds." All payments to **SNET** must be made using one of the methods set forth in the Connecticut Access Service Tariff approved by the DPUC or via electronic funds credit transfers through the Automated Clearing House Association (ACH) network to the financial institution designated by **SNET**. If CLEC makes payment through funds transfer via the ACH network, remittance information will be communicated together with the funds transfer via the ACH network. If CLEC makes payment through funds transfer via the ACH network, CLEC must use the CCD+ or the CTX transaction set. CLEC and **SNET** will abide by the National Automated Clearing House Association (NACHA) Rules and Regulations. Each payment must be received by **SNET** no later than the Bill Due Date of each bill or Late Payment Charges will apply. **SNET** is not liable for any delays in receipt of funds or errors in entries caused by CLEC or Third Parties, including CLEC's financial institution. CLEC is responsible for its own banking fees.

8.4 If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "**Non-Paying Party**") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("**Disputed Amounts**") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all

Disputed Amounts into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties. To be acceptable, the Third Party escrow agent must meet all of the following criteria:

- 8.4.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;
- 8.4.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and
- 8.4.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.
- 8.4.4 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:
 - 8.4.4.1 The escrow account must be an interest bearing account;
 - 8.4.4.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;
 - 8.4.4.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;
 - 8.4.4.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and
 - 8.4.4.5 disbursements from the escrow account will be limited to those:
 - 8.4.4.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing

Party only are not sufficient to properly authorize any disbursement); or

8.4.4.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or

8.4.4.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.

8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.

8.6 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 10.

8.7 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:

8.7.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;

8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;

8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and

- 8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.
- 8.8 If the Non-Paying Party disputes any charges and the entire dispute is resolved in favor of the Billing Party, the Parties will cooperate to ensure that all of the actions required by Section 8.7.3 and Section 8.7.4 are completed within the times specified therein.
 - 8.8.1 Failure by the Non-Paying Party to pay any charges determined to be owed to the Billing Party within the time specified in Section 8.7 shall be grounds for termination of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services provided under this Agreement.
- 8.9 If either Party requests one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.
 - 8.9.1 Each additional copy of any bill provided for billing from **SBC-SWBT**'s CABS billing system will incur charges as specified in Access Service Tariff FCC No. 73 Section 13 Alternate Bill Media.
 - 8.9.2 Bills provided to CLEC from **SBC-SWBT**'s CRIS system through Bill Plus will incur charges as specified in Appendix Pricing.
- 8.10 Exchange of Billing Message Information
 - 8.10.1 **SBC-13 STATE** will provide CLEC a specific Daily Usage File (“**DUF**” or “**Usage Extract**”) for Resale Services and Network Element usage sensitive services provided hereunder (“**Customer Usage Data**”). Such Customer Usage Data will be provided by **SBC-13STATE** in accordance with Exchange Message Interface (**EMI**) guidelines supported by OBF. Any exceptions to the supported formats will be noted in the DUF implementation

requirements documentation for each SBC owned ILEC. The DUF will include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Network Element to the extent that similar usage sensitive information is provided to retail End Users of **SBC-13STATE** within that state, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by **SBC-13STATE** in connection with Resale Services and Network Elements provided by **SBC-13STATE**. Procedures and processes for implementing the interfaces with **SBC-AMERITECH**, **PACIFIC**, **NEVADA**, **SNET**, and **SBC-SWBT** will be included in implementation requirements documentation.

- 8.10.2 To establish file transmission for the Daily Usage File, CLEC must provide a separate written request for each state to **SBC-AMERITECH**, **PACIFIC**, **NEVADA**, **SNET** and **SBC-SWBT** no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 8.10.3 Call detail for LEC-carried calls that are alternately billed to CLEC End Users lines provided by **SBC-AMERITECH**, **SBC-SWBT** and **SNET** through Resale or Network Elements will be forwarded to CLEC as rated call detail on the DUF. Unless otherwise specified in Appendix Message Exchange, call detail for LEC-carried calls that are alternately billed to CLEC End User lines provided by **PACIFIC** or **NEVADA** through Resale or Network Elements will be forwarded to CLEC as rated call detail on the DUF.
- 8.10.4 **SBC-SWBT** will bill CLEC for Usage Extract furnished by **SBC-SWBT** in accordance with the price(s) provided in the applicable Appendix Pricing under "Electronic Billing Information."
- 8.10.5 Interexchange call detail on Resale Services or Network Elements (ports) that is forwarded to **SBC-13STATE** for billing, which would otherwise be processed by **SBC-13STATE** for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold

account. Billing for Information Services and other ancillary services traffic on Resale Services and Network Elements (ports) will be passed through when **SBC-13STATE** records the message.

8.10.6 **SBC-AMERITECH, NEVADA** and **PACIFIC** Ancillary Services messages originated on or billed to a Resale Service or Network Element (port) in those seven (7) states are subject to the rates, terms and conditions of Appendix MESSAGE EXCHANGE.

8.10.7 CLEC is responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

- V. Section 9 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

9. NONPAYMENT AND PROCEDURES FOR DISCONNECTION

9.1 If a Party is furnished Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 9.1 through 9.7, inclusive, shall be applied separately for each such state.

9.2 Failure to pay charges shall be grounds for disconnection of Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("**Unpaid Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

9.2.1 **AM-IN** will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.

- 9.2.2 **SWBT-KAN** will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.
 - 9.2.3 **SWBT-MO** will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.
- 9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:
- 9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed (**"Disputed Amounts"**) and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and
 - 9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and
 - 9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and
 - 9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.
- 9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.

9.5 **SBC-12STATE**

9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

9.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

9.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.

9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5.1, Section 9.5.1.1 and Section 9.5.1.2:

9.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and

9.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable

performance interval, Performance
Benchmark or Performance Measure.

9.6 **SBC-AMERITECH only**

9.6.1 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.6.1.2 discontinue providing any Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by **AM-IN** will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.

9.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.

9.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.7 **SBC-7STATE only**

9.7.1 Any demand provided by **SBC-7STATE** to CLEC under Section 9.5.1 will further specify that upon disconnection of CLEC, **SBC-7STATE** will cause CLEC's End Users that

are provisioned through Resale Services to be transferred to **SBC-7STATE** local service.

9.7.1.1 A copy of the demand provided to CLEC under Section 9.7.1 will be provided to the Commission.

9.7.2 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,

9.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and

9.7.2.2 disconnect any Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.

9.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by **SWBT-KAN** will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.7.3 On the same date that Resale Services to CLEC are disconnected, **SBC-7STATE** will transfer CLEC's End Users provisioned through Resale Services to **SBC-7STATE**'s local service. To the extent available at retail from **SBC-7STATE**, the Resale End Users transferred to **SBC-7STATE**'s local service will receive the same services that were provided through CLEC immediately prior to the time of transfer; provided, however, **SBC-7STATE** reserves the right to toll restrict (both interLATA and intraLATA) such transferred End Users.

- 9.7.3.1 Notwithstanding any inconsistent provisions in this Agreement, the transfer of Resale End Users to **SWBT-MO** will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.
- 9.7.3.2 **SBC-7STATE** will inform the Commission of the names of all Resale End Users transferred through this process.
- 9.7.3.3 Conversion charges and service establishment charges for transferring Resale End Users to **SBC-7STATE** as specified in Section 9.7.3 will be billed to CLEC.
- 9.7.3.4 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of disconnection of service in compliance with Section 9.7.2. **SBC-7STATE** has no liability to CLEC or CLEC's End Users in the event of disconnection of service to CLEC and the transfer of any Resale End Users to **SBC-7STATE** local service in connection with such disconnection.
- 9.7.4 Within five (5) calendar days following the transfer, **SBC-7STATE** will notify each transferred Resale End User that because of CLEC's failure to pay **SBC-7STATE**, the End User's local service is now being provided by **SBC-7STATE**. This notice will also advise each transferred Resale End User that the End User has thirty (30) calendar days from the date of transfer to select a new Local Service Provider.
 - 9.7.4.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Missouri Resale End Users will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.
 - 9.7.4.1.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Kansas Resale End Users will comply with Kansas Corporation Commission

Order No. 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.7.5 The transferred Resale End User shall be responsible for any and all charges incurred during the selection period other than those billed to CLEC under Section 9.7.3.3.

9.7.6 If any Resale End User transferred to **SBC-7STATE**'s local service under Section 9.7.3 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer, **SBC-7STATE** may terminate the transferred Resale End User's service.

9.7.6.1 **SBC-7STATE** will notify the Commission of the names of all transferred Resale End Users whose local service was terminated pursuant to Section 9.7.5.

9.7.6.2 Nothing in this Agreement shall be interpreted to obligate **SBC-7STATE** to continue to provide local service to any transferred Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights **SBC-7STATE** has with regard to such transferred Resale End Users under Applicable Law; provided, however,

9.7.6.2.1 in **PACIFIC** only, following expiration of the selection period and disconnection of such transferred Resale End Users, where facilities permit, **PACIFIC** will furnish transferred and subsequently disconnected local residential End Users with "quick dial tone."

9.8 **SNET** only

9.8.1 For nonpayment and procedures for disconnection for **SNET**, see the applicable **DPUC** ordered tariff.

- VI. Section 20 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

20. CONFIDENTIALITY

- 20.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 20.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
 - 20.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
 - 20.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
 - 20.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
 - 20.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 20.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
 - 20.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
 - 20.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

- VII. Section 21 of the General Terms and Conditions of the Agreement is replaced in its entirety with the following language:

21. INTERVENING LAW

- 21.1 This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC, et. al.*, 535 U.S. ___ (2002). The Parties further acknowledge that on May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, No. 00-101, in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. December 9, 1999) ("the Line Sharing Order"), specifically vacated the Line Sharing Order, and remanded both these orders to the FCC for further consideration in accordance with the decision. In addition, on November 24, 1999, the FCC issued its Supplemental Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) and on June 2, 2000, its Supplemental Order Clarification,

(FCC 00-183), in CC Docket 96-98. The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the “ISP Intercarrier Compensation Order”) which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). By executing this Agreement and any Amendments to such Agreement and carrying out the rates, terms and conditions herein, **SBC-13STATE** does not waive any of its legal rights, and expressly reserves all of its rights, remedies and arguments, including but not limited to those related to any of the foregoing decisions or proceedings or any remands thereof, including its right to seek legal review or a stay pending appeal of such decisions and its rights under this Intervening Law paragraph. These rights also include but are not limited to **SBC-13STATE**’s right to exercise its option at any time in the future to invoke these Intervening Law or Change of Law provisions to adopt on a date specified by **SBC-13STATE** the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC’s prescribed terminating compensation rates, and other terms and conditions.

VIII. Section 45 is removed in its entirety and replace with the following language.

45. INTENTIONALLY LEFT BLANK

- IX. The SBC-13STATE FCC Merger Conditions Appendix in the underlying Agreement is hereby replaced with the revised, SBC-13STATE FCC Merger Conditions Appendix, which is attached hereto and incorporated herein by this reference.
- X. The Merger Promotion Templates are replaced in the underlying Agreement in the states of Connecticut, Illinois, Indiana, Michigan, Nevada, Ohio and Wisconsin.
- XI. In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court’s opinion in *Verizon v. FCC*, 535 U.S. ____ (2002); the D.C. Circuit’s decision in *United States Telecom Association, et. al v. FCC*, No. 00-101 (May 24, 2002); the FCC’s Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) (rel. November 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000) in CC Docket 96-98; or the FCC’s Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68 (the “ISP Intercarrier Compensation Order”) (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any

UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, ILEC reserves its right to exercise its option at any time in the future to adopt on a date specified by ILEC the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party. In such event, the Parties shall have sixty (60) days from the effective date of the order to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the effective date of the order, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

- XII. This Amendment shall be filed with and is subject to approval by The Connecticut Department of Public Utility Control (CT-DPUC), The Illinois Commerce Commission (IL-CC), The Indiana Utilities Regulatory Commission (IN-URC), The Michigan Public Service Commission (MI-PSC), The Public Utilities Commission of Nevada (NV-PUC), The Public Utilities Commission of Ohio (PUC-OH), The Public Service Commission of Wisconsin (PSC-WI) and shall become effective following approval by such Commission.
- XIII. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENTS SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment to the Agreement was exchanged in triplicate on this _____ day of _____, 2002, by Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, The Southern New England Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin, signing by and through its duly authorized representative, and CLEC, signing by and through its duly authorized representative.

American Fiber Network, Inc.

Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada Bell Telephone Company, The Ohio Bell Telephone Company, The Southern New England Telephone Company, and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin by SBC Telecommunications, Inc., its authorized agent

By: _____

By: _____

Title: _____

Title: President – Industry Markets

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Date: _____

Date: _____